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ALEXANDER L. STEVENS

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No. 83-721

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

ARTHUR T. DAVIDSON, M.D., Esq.

Petitioner,

v.

THE CONNECTICUT BANK AND TRUST COMPANY,
and J. THOMAS JOHNSON, Assistant Counsel
of the Connecticut Bank and Trust Company,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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BRIEF FOR RESPONDENTS IN OPPOSITION

The petition for a writ of certiorari submitted by petitioner ("Davidson") raises no genuine issue requiring this Court's attention. The Court of Appeals for the Second Circuit found the appeal from the district court's dismissal of Davidson's complaint [pages 1a and 2a*] to be "an extraordinary case of manifest frivolity" and awarded attorney's fees on the appeal against Davidson, sua sponte [page 8a]—among other things. This petition attempts to "bootstrap" that discretionary award into constitutional questions.

* Bracketed references to pages with the suffix "a" are to the appendix to Davidson's petition.

COUNTER-STATEMENT OF THE CASE

Davidson's statement of the case is argumentative and assumes and states facts not part of this case.* An unbiased statement of the case is found in the Second Circuit's order [pages 3a-9a]. Davidson served a purported notice of appeal from that order, but said notice was defective. It did not conform to the requirements of Rule 10 of this Court. Neither was the "appeal" perfected as required by Rules 10 and 12 of this Court. The determination of the district court, as affirmed by the Second Circuit, has become final. Davidson's petition does not seek review of that dismissal determination.

SUMMARY OF ARGUMENT

There is a lack of basis for certiorari in light of Rule 17 of this Court. The only questions presented for review (however stated) are whether the Second Circuit's *sua sponte* discretionary award of attorney's fees and costs occasioned by Davidson's "manifestly frivolous" appeal was (i) in retaliation for Davidson's charges of racial prejudice against Judge Knapp in another matter, and (ii) constitutionally impermissible. This petition is itself "an extraordinary case of manifest frivolity". No real "special and important reasons" for certiorari exist here.

ARGUMENT

I. The Discretionary Award Of Attorneys Fees And Costs Pursuant to Rule 38 Of The Federal Rules of Appellate Procedure Does Not Raise Any Special Or Important Reason For Certiorari.

It is well-settled, and has long been held, that the courts of appeal properly allow damages, attorneys' fees and other expenses incurred by an appellee if the appeal is frivolous irre-

* For example, 21 days after District Judge Whitman Knapp dismissed Davidson's complaint in this action, Davidson charged Judge Knapp with racial prejudice because of a reference allegedly made by Judge Knapp to one of some 20 other then active cases and proceedings initiated by Davidson, a member of the bar as his own attorney, in various federal and state courts throughout the country. Davidson's "Questions Presented", arguments in his petition, and the decision of Chief Judge Wilfred Feinberg of the Second Circuit [pages 12a-18a] appear to concern only this non-issue.

spective of whether the appeal resulted in delay. The courts do so in their discretion as a matter of justice to the appellee and as a penalty against the appellant. *Dunscombe v. Sayle*, 340 F.2d 311 (5th Cir. 1965), *cert. den.* 382 U.S. 814 (1965); *Lowe v. Willacy*, 239 F.2d 179 (9th Cir. 1956); *Griffin Wellpoint Corporation v. Munro-Langstroth, Inc.*, 269 F.2d 64 (1st Cir. 1959); *Ginsburg v. Stern*, 295 F.2d 698 (3rd Cir. 1961). See, also, 9 Moore's Federal Practice ¶238.02, at 38-3 (2d ed.).

A fortiori, the discretionary award by the Second Circuit did not create a special or important reason for certiorari within the purview of Rule 17 of this Court.

II. Davidson's Petition For A Writ Of Certiorari Is Frivolous Warranting An Award To Respondents Of Appropriate Damages.

Davidson's present petition is, like his appeal to the Second Circuit, an "extraordinary case of manifest frivolity".

Davidson characterizes the Second Circuit's award under F.R.A.P. Rule 38 as (i) "cruel and inhuman treatment . . . in retaliation for [Davidson's] filing charges of racial discrimination against a United States Federal Judge" (pages 3—the third Question Presented For Review—and 9*), (ii) "in retaliation for Petitioner filing of a number of Equal Employment Opportunity Civil Rights Suits" (page 12), (iii) "cruel and inhuman punishment" (page 13), and (iv) "vindictive and vengeful" (pages 20 and 21). Davidson claims that the award, so characterized, violated various constitutional rights of his.

These contentions are meritless on their face. This petition is meritless on its face. According to Davidson's arguments, any exercise of discretion under F.R.A.P. Rule 38 (or of Rule 49.2 of the Rules of this Court) would be constitutionally impermissible.

As this petition is frivolous, respondents request an award of appropriate damages pursuant to Rule 49.2.

* Parenthetical references are to pages of Davidson's petition.

CONCLUSION

Davidson's petition is patently meritless and frivolous and should be summarily denied.